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Regulatory
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Proposed Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-40 and 3 VAC 5-70
Regulation title	Requirements for Product Approval and Other Provisions
Action title	Direct Shipment Rules
Document preparation date	March 26, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The 2003 General Assembly enacted House Bill 1652 and Senate Bill 1117, two identical pieces of legislation allowing direct shipments of beer and wine to consumers by holders of wine or beer shippers' licenses. The second enactment clause of each bill states, "That the Alcoholic Beverage Control Board shall promulgate regulations to implement the provisions of this act to be effective within 90 days of its enactment. The bills were signed by the Governor on April 9, 2003. The regulation is not otherwise exempt from the provisions of the Administrative Process Act. Emergency regulations were promulgated effective July 10, 2003. This action proposes the permanent regulations to replace the emergency regulations. The proposed text is the same as the emergency regulations. The proposed regulation provides for the application process, record-keeping and reporting process for wine or beer shippers' licensees and common carriers approved to deliver shipments from such licensees. An associated secondary action revises current label approval rules to exempt products sold only by direct shipment from most such requirements.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 4.1-103 of the Code of Virginia grants the Alcoholic Beverage Control Board general authority to promulgate regulations, to grant, suspend, and revoke licenses, and to do all acts necessary or advisable to carry out the purposes of Title 4.1. Section 4.1-111 authorizes the Board to promulgate reasonable regulations, not inconsistent with law, which it deems necessary to carry out the provisions of Title 4.1. Sections 4.1-112.1 and 4.1-204, as effective July 1, 2003, authorize the Board promulgate such regulations as it may deem reasonably necessary governing the regulation of holders of wine shippers' licenses and beer shippers' licenses and the common carriers approved to deliver shipments of wine and beer from such licensees. The purpose of this regulation is to specify the process for applying for such licenses or carrier approval and establish record-keeping and reporting requirements for licensees and approved carriers. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law. The regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The board has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians because an effective regulatory scheme is necessary to ensure that alcoholic beverages shipped to Virginia consumers are only delivered to those legally entitled to receive and consume them, and that all appropriate Virginia taxes are collected on such shipments.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The regulation will provide the process for those qualified for wine or beer shippers' licenses to apply for such licenses, and regulate the process of adding and deleting brands approved for shipment. There are record-keeping and reporting requirements, as well as an approval process and delivery rules for common carriers who would carry wine or beer shipments to Virginia consumers.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The regulatory action poses no disadvantages to the public or the Commonwealth. The primary advantages to the public and the Commonwealth are ensuring that records necessary for the enforcement of the laws of the Commonwealth relating to the lawful possession and sale of alcoholic beverages are maintained, and that appropriate Virginia taxes on such beverages shipped into the Commonwealth are collected.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	At current levels of shipment and reporting, the cost to implement and enforce the proposed regulation has been absorbed within existing appropriations.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	Alcoholic beverage manufacturers and retailers who desire to ship beer or wine directly to Virginia consumers.
Agency’s best estimate of the number of such entities that will be affected	While the regulation could apply to thousands of alcoholic beverage manufacturers and retailers across the country, it is estimated that only a few hundred will choose to engage in direct shipment to consumers in Virginia. 168 direct shipment licenses have been issued since July 1, 2003.
Projected cost of the regulation for affected individuals, businesses, or other entities	The cost of complying with the regulation for affected businesses will vary with the volume of sales and shipments to Virginia customers.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

In drafting the regulation, the Board sought to require the minimum paperwork necessary to

comply with the statute and protect the public safety and revenue. Less frequent reports by licensees were considered, but monthly reporting and tax remission was determined necessary to insure that the Board could quickly respond to public safety issues involving deliveries to those to whom alcoholic beverages could not lawfully be sold and to insure the proper collection of all taxes due.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
No comments were received.		

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The action should have no impact on the institution of the family.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
3 VAC 5-40-20		All wines sold in the Commonwealth must be submitted for state label approval.	Wines sold by direct shipment need only submit a copy of federal label approval. The board feels that since these will be only occasional sales and these wines will not be in widespread distribution in the Commonwealth, the lesser standard will be enough to protect consumers.

3 VAC 5-40-50		All beers sold in the Commonwealth must be submitted for state label approval.	Beers sold by direct shipment need only submit a copy of federal label approval. The board feels that since these will be only occasional sales and these beers will not be in widespread distribution in the Commonwealth, the lesser standard will be enough to protect consumers.
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The new section in chapter 70, 3 VAC 5-70-220, provides in subsection A that qualified applicants may apply for a wine or beer shippers' license using ABC's standard application form, with the following attachments required to comply with Section 4.1-112.1 of the Code:

- 1) a list of brands sought to be shipped by the applicant
- 2) consent of the brand owner, if the applicant is not also the brand owner
- 3) a photocopy of its current alcoholic beverage license
- 4) evidence of its registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax

Subsection B requires that any manufacturer which applies for a shippers' license or consents to another's application to ship its brands must notify all wholesalers that have been authorized to distribute its products in Virginia of such application.

Subsection C provides the process for the addition or deletion of brands authorized to be shipped under a wine or beer shippers' license.

Subsection D sets forth the process for a brand owner to withdraw consent to the shipping of its brands by a license holder.

Subsection E requires license holders to maintain records of each shipment made pursuant to the license for a period of two years.

Subsection F requires license holders to file a monthly report of all shipments made under the license during the previous month.

Subsection G provides the process for common carriers to seek approval to carry shipments of wine or beer made by holders of wine or beer shippers' licenses.

Subsection H sets forth the requirements for delivery of such shipments, including determination of legal age of the recipient and signature.

Subsection I requires all approved common carriers to maintain records of all shipments made by wine or beer shippers' licensees for a period of two years.

Subsection J provides for quarterly reporting by each approved common carrier of the dates and names and addresses of shippers and recipients for each shipment carried for a wine or beer shippers' licensee.

There have been no changes since the publication of the emergency regulation.